SUBJECT INDEX.

Page

I.

THE DIRECT AND UNMISTAKABLE FUNDAMENTAL CONFLICT BETWEEN THE DECISION OF THE COURT OF APPEALS IN THE CAUSE AT BAR, AND THE DECISION OF THE SUPREME COURT IN *Land* v. *Dollar*, April 7, 1947 . . 1, 2, 3, 4

II.

THE ACTUAL RENDERING BY THE COURT OF APPEALS OF A DECISION "UPON A QUESTION OF SUBSTANCE RELATING TO THE CONSTRUCTION OR APPLICATION OF THE CONSTITUTION, OR . . . STATUTE, OF THE UNITED STATES, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT" 4, 5

III.

THE ADVISING BY THE STATE OF MISSISSIPPI THAT THE DECISION OF THE COURT OF APPEALS AFFECTS ITS PUBLIC WELFARE, SOVEREIGNTY, AND INTEREST, AND THE STATE'S SUGGESTION TO GRANT THE REVIEW REQUESTED 5

TABLE OF AUTHORITIES.

Constitution of the United States, Article 1, Clause 17 4
Rule 38 (5) (c) of this Court 2, 4

TABLE OF CASES.

Dollar et al. v. Land, 154 F. 2d 307 2
Land v. Dollar, No. 207, October Term, 1946, Supreme Court of the United States 1, 2, 3
Louisiana v. Garfield, 211 U. S. 70 . . . . . 2, 3
Morrison v. Work, 266 U. S. 481 . . . . . 2, 3
Naganab v. Hitchcock, 202 U. S. 473 . . . . . 2, 3
New Mexico v. Lane, 243 U. S. 52 . . . . . 2, 3
United States v. Lee, 106 U. S. 196 . . . . . 2, 3
Young v. Anderson, et al. (United States Court of Appeals for the District of Columbia) 160 F. 2d 225, advance sheets 4

TABLE OF STATUTES.

Mississippi Code, 1930, Section 6058 4
United States Code, Title 16, Section 513 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1194.

ALICE MARTENS YOUNG, ETC., *Petitioner*,

v.

CLINTON P. ANDERSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, ET AL.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI.

Petitioner hereby petitions for rehearing on her Petition herein for Writ of Certiorari, and for reasons therefor respectfully shows:

I.

It appears that the Court may not have realized the similarity of the principles governing this case, and also *Land* v. *Dollar*, No. 207, Supreme Court, October Term, 1946, decided April 7, 1947. Although Petitioner has no guide for the basis of the Court's action in not assuming jurisdiction, the considerations held by it as controlling in *Land*

v. *Dollar, supra,* are nevertheless so plainly in conflict with the reasoning of the Court of Appeals in the cause at bar as to establish, inescapably it seems, that on the question of jurisdiction this cause fully qualifies under this Court's Rule 38(5)(c).

This conflict assumes increased importance when considered in connection with the fact that "of the many legal problems attendant upon the relationship of Government to the citizenry, probably none have been more perplexing or stubbornly resistant to precise solution than those arising under the doctrine of sovereign immunity". *Dollar et al.* v. *Land* (Court of Appeals), 154 F. 2d 307, 310, 311. The difficulty so recognized by the Court of Appeals is emphasized, and certainly illustrated, by its decision in the cause at bar.

Thus, as indicated Petitioner's Petition, pages 10, 11, and Brief in Support, pages 24-28, filed herein April 3, 1947, the Court of Appeals ruled, erroneously, as follows: (R. 79)

> " . . . we also think it perfectly clear that whatever now remains of the doctrine in the *Lee* case has no applicability in the case at hand, for the rule in that case which appellant seeks to apply in this—even on a state of facts more nearly akin to those in the *Lee* case—must, in the light of later decisions of the Supreme Court, be considered as no longer controlling. See *Morrison* v. *Work*, 266 U. S. 481 (1925); *New Mexico* v. *Lane*, 243 U. S. 52 (1917); *Louisiana* v. *Garfield*, 211 U. S. 70 (1908); *Naganab* v. *Hitchcock*, 202 U. S. 473 (1906)."

Thereafter, and on April 7, 1947, in *Land* v. *Dollar, supra,* this Court reaffirmed the principles of *United States* v. *Lee*, 106 U. S. 196. It noted no corrosive limitations as announced by the Court of Appeals in the above, but on the contrary reiterated that under circumstances such as those outlined in the complaint in *Land* v. *Dollar* "the rule of *United States* v. *Lee, supra,* has been *repeatedly* approved." (Italics supplied) Moreover, this Court ex-

pressly observed further that the "rule is applicable here though we assume that the record title to the shares is in the Commission."

Comparison of the facts so assumed in *Land* v. *Dollar*, *supra*, with the facts in the cause at bar, shows that what was assumed in the former also appears without dispute here, namely, that while the record title is admittedly in the United States (as it was assumed to be in the Maritime Commission for the United States), in each case the plaintiff claims that public officials are "tort-feasors by exceeding the limits of their authority." Yet, as the record now stands, the complaint in *Land* v. *Dollar* states a cause of action, while in the cause at bar it does not. Therein appears the unmistakable conflict between the decisions of this Court, and the application of the same by the Court of Appeals, which arises from the differing fundamental conception by the Court of Appeals as to the continuing force of *United States* v. *Lee* as an authority.

Any further required demonstration in this connection is believed furnished by the fact, noted in the foregoing quotation, that as authority for holding that the rule in *United States* v. *Lee* must be considered "as no longer controlling", the Court of Appeals relies upon *"Morrison* v. *Work*, 266 U. S. 481 (1925); *New Mexico* v. *Lane*, 243 U. S. 52 (1917); *Louisiana* v. *Garfield*, 211 U. S. 70 (1908); *Naganab* v. *Hitchcock*, 202 U. S. 473 (1906)." Yet, in *Land* v. *Dollar*, *supra*, this Court plainly recognizes the distinguishing characteristics of these very cases, and holds that they are not restrictive of the principles applied in *United States* v. *Lee*, observing that where public officers "unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity", the plaintiff "is not relegated to the Court of Claims to recover a money judgment", and that "if it is decided on the merits that the contract was illegal", the plaintiffs "are entitled to the possession of the shares as against petitioners."

It appears indisputable that in the cause at bar, the officers of the United States failed to obtain the consent of the

State of Mississippi as required by the Weeks Act, so as to render lawful what was attempted to be done to acquire title for the United States. Here also the final support for the conclusions of the Court of Appeals has been entirely destroyed by the later pronouncement of this Court. Accordingly, the Court of Appeals "has not given proper effect to an applicable decision of this Court" under the above cited principles, and this Court should assume jurisdiction to correct the error.

II.

The ruling of the Court of Appeals upon Petitioner's contention of unconstitutionality of the Weeks Act is presented on page 8 of Petitioner's Petition, under Reasons Relied Upon for Allowance of the Writ, as further serving to bring such Petition within this Court's Rule 38(5)(c). When such Petition was filed, the decision of the Court of Appeals had not yet been reported. In the Government's Brief in Opposition, it is asserted, page 8, that contrary to Petitioner's contention, the Court of Appeals did not actually decide the issue of the constitutionality of the Weeks Act.

The advance sheets for the report of this decision (160 F. 2d 225) are now available, having been issued subsequent to this Court's ruling herein on May 12, 1947, and show the following principal decision headnote:

> "The Weeks Act, under which the Secretary of Agriculture is authorized to acquire cut-over or denuded lands within the watersheds of navigable streams in aid of navigation, or in promoting the growth of timber, is constitutional. Weeks Law #4, 5, 16 U.S.C.A. #513; U.S.C.A. Const. art. 1, #cl. 17; Code Miss., 1930, #6058."

It is clear, therefore, that the United States Court of Appeals for the District of Columbia has actually rendered a decision—or by its language has permitted the conclusion to be responsibly drawn that it has—"upon a question of

substance relating to the construction or application of the Constitution, or . . . statute, of the United States, which has not been, but should be, settled by this Court."

III.

The State of Mississippi, by its Brief as Amicus Curiae, filed herein May 5, 1947, advises that the decision of the Court of Appeals in the cause at bar affects the public welfare and sovereignty of the State of Mississippi, and that the rulings of the Court of Appeals, and the questions based thereon presented in Petitioner's Petition, affect the State's interest, and accordingly suggests that such questions be reviewed by this Court.

Respectfully submitted,

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CERTIFICATE.

The foregoing Petition for Rehearing is presented in good faith and not for delay.

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